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UNITED NATIONS DECADE OF INTERNATIONAL LAW

REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

Letter dated 30 July 1991 from the Permanent Representative of Malta to the United Nations addressed to the Secretary-General

I have the honour to communicate to you, for information, the text of the report of the Meeting of Experts on Peaceful Settlement of Disputes of the Conference on Security and Cooperation in Europe (CSCE) held in Valletta from 15 January to 8 February 1991 (see annex).

As reflected in the report, the meeting completed its deliberations successfully with the adoption by the participating States of a set of principles for dispute settlement and provisions for a CSCE procedure for peaceful settlement of disputes.

The report of the Valletta Meeting was considered by the Ministers of the CSCE participating States at the first meeting of the Council of Ministers held in Berlin between 19 and 20 June 1991.

My Government in its capacity as the host Government and with the concurrence of the CSCE participating States has instructed me to request the circulation of the report as an official document of the General Assembly under items 129 and 133 of the provisional agenda.

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* A/46/150.

Accordingly, I should be grateful if you could arrange for the circulation of the report of the Valetta CSCE Meeting as an official document of the General Assembly.

(Signed) Dr. Alexander BORG OLIVIER
Ambassador
Permanent Representative

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ANNEX

REPORT OF THE CSCE MEETING OF EXPERTS ON PEACEFUL SETTLEMENT OF DISPUTES, VALLETTA 1991

The representatives of Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech and Slovak Federal Republic, Denmark, Finland, France, Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg - European Community, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Yugoslavia met in Valletta from 15 January to 8 February 1991 in accordance with the relevant provisions of the Concluding Document of the Vienna CSCE Meeting 1986 and the Charter of Paris for a New Europe, to consider the question of Peaceful Settlement of Disputes.

The representative of Albania attended the Meeting as observer.

The formal opening was attended by H.E. Dr. Censu Tabone, President of Malta, who gave an address of welcome. The Meeting was opened by the Hon. Professor Guido de Marco, Deputy Prime Minister and Minister of Foreign Affairs and Justice of Malta, who delivered the opening address on behalf of the host country. He also closed the Meeting.

Opening statements were made by Heads of Delegation of the participating States.

The Hon. Gianni de Michelis, Minister of Foreign Affairs of Italy, addressed the meeting.

A number of proposals were submitted for consideration by the Meeting.

The representatives of the participating States held a general exchange of views on the peaceful settlement of disputes. It was observed that developments in Europe and the world since the Vienna Follow-up Meeting had enhanced the importance of the Meeting, and that this was also reflected in the Charter of Paris for a New Europe, signed by the Heads of State or Government of the participating States on 21 November 1990.

During their deliberations, the representatives of the participating States took note of the fact that the States were already bound by a number of agreements containing various methods for a peaceful settlement of disputes, and that, in practice, they made use of an even greater variety of such methods. It was noted in particular that many participating States have devised innovative approaches to dispute settlement designed to suit the characteristics of particular disputes, as well as developed arrangements aimed at preventing or managing disputes, such as notification and consultation arrangements, and the establishment of ad hoc and permanent joint commissions. It was also noted that many participating States were parties to the 1899 and/or 1907 Hague Conventions for the Pacific Settlement of International Disputes, and that many of them have accepted the jurisdiction of the International Court of Justice, in accordance with the Statute of the Court.

Following their deliberations, the representatives of the participating States adopted this Report.

PRINCIPLES FOR DISPUTE SETTLEMENT AND PROVISIONS FOR A CSCE PROCEDURE FOR PEACEFUL SETTLEMENT OF DISPUTES

INTRODUCTION

The commitment of the participating States in the Conference on Security and Co-operation in Europe (CSCE), laid down in Principle V of the Helsinki Final Act, to settle disputes among them by peaceful means represents one of the cornerstones of the CSCE process. This commitment is reaffirmed in the Vienna Concluding Document and the Charter of Paris for a New Europe.

In accordance with the Helsinki Final Act, all ten principles of the Declaration on Principles Guiding Relations between Participating States are of primary significance and, accordingly, apply equally and unreservedly, each of them being interpreted taking into account the others.

In the Charter of Paris for a New Europe the participating States solemnly pledged their full commitment to these ten principles, in order to uphold and promote democracy, peace and unity in Europe. They expressed their conviction that in order to strengthen peace and security among the participating States, the advancement of democracy, and respect for and effective exercise of human rights, are indispensable. They also reaffirmed the equal rights of peoples and their right to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States.

Full implementation of all CSCE principles and commitments constitutes in itself an essential element in preventing disputes among the participating States.

In accordance with international law and in particular the Charter of the United Nations, and also in accordance with the relevant principles of the Helsinki Final Act, threat or use of force must not be resorted to in order to settle disputes between States. Such disputes must be settled through peaceful means in accordance with international law. All States must comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security.

The existence of appropriate dispute settlement procedures is indispensable for the implementation of the principle that all disputes should be settled exclusively by peaceful means. Such procedures are an essential contribution to the strengthening of the rule of law at the international level and of international peace and security, and justice.

International disputes are to be settled on the basis of the sovereign equality of States and in accordance with the principle of the free choice of means in conformity with international obligations and commitments and with the principles of justice and international law.

Agreement, whether ad hoc or given in advance, between the parties to a dispute upon procedures for its settlement, appropriate for the parties concerned and the characteristics of the dispute, is essential for an effective and lasting system for the peaceful settlement of disputes.

Compliance with binding decisions reached through procedures for the peaceful settlement of disputes is an essential element in any overall structure for the peaceful settlement of disputes.

PRINCIPLES FOR DISPUTE SETTLEMENT

General

1. The participating States reaffirm their commitment to abide by international law and their determination to respect and fully implement all CSCE principles and provisions.

2. In conformity with international law, including the Charter of the United Nations, and in accordance with the relevant CSCE principles and provisions, the participating States will refrain from resorting to the threat or use of force to settle their disputes, and will seek a peaceful settlement thereof.

3. The participating States recognize that recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties is not incompatible with the sovereign equality of States. A request to have recourse to a settlement procedure does not constitute an unfriendly act.

Dispute prevention

4. The participating States will seek to prevent disputes and to develop, utilize, and improve mechanisms designed to prevent disputes from occurring, including, as appropriate, arrangements and procedures for prior notification and consultation regarding actions by one State likely to affect significantly the interests of another State.

Dispute management

5. Should disputes nevertheless occur, the participating States will take particular care not to let any dispute among them develop in such a way that it will endanger international peace and security, and justice. They will take appropriate steps to manage their disputes pending their settlement. To that end, the participating States will:

(a) address disputes at an early stage;

(b) refrain throughout the course of a dispute from any action which may aggravate the situation and make more difficult or impede the peaceful settlement of the dispute;

(c) seek by all appropriate means to make arrangements enabling the maintenance of good relations between them, including, where appropriate, the adoption of interim measures which are without prejudice to their legal positions in the dispute.

Dispute solution

6. As laid down in the Helsinki Final Act and subsequent relevant documents, the participating States will endeavour in good faith and in a spirit of co-operation to reach a rapid and equitable solution of their disputes on the basis of international law, and will for this purpose use such means as negotiation, enquiry, good offices, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice, including any settlement procedure agreed to in advance of disputes to which they are parties. To that end, the participating States concerned will in particular:

(a) consult with each other at as early a stage as possible;

(b) in case they cannot settle the dispute among themselves, endeavour to agree upon a settlement procedure suited to the nature and characteristics of the particular dispute;

(c) where a dispute is subject to a dispute settlement procedure agreed upon between the parties, settle the dispute through such procedure, unless they agree otherwise;

(d) accept, in the context of the CSCE Procedure for Peaceful Settlement of Disputes and its scope of applicability, the mandatory involvement of a third party when a dispute cannot be settled by other peaceful means.

Information from participating States

7. The participating States will, upon request from a participating State involved in a dispute, make best efforts to provide information regarding appropriate methods for the settlement of such dispute.

Continued efforts

8. In the event of failure to reach a solution within a reasonable time through the method agreed upon, the participating States parties to the dispute will continue to seek a way to settle the dispute peacefully.

Strengthening of commitments

9. The participating States will strengthen their commitments relating to the peaceful settlement of disputes. To that end, they will in particular:

(a) endeavour to include, in their future treaties, clauses providing for the settlement of disputes arising from the interpretation or application of those treaties, and to consider whether or not there is an appropriate role for a third party, be it mandatory or non-mandatory;

(b) refrain to the extent possible from making reservations to dispute settlement procedures;

(c) consider withdrawing reservations they may have made regarding dispute settlement procedures embodied in multilateral treaties;

(d) consider accepting the compulsory jurisdiction of the International Court of Justice, either by treaty or by unilateral declaration under Article 36, paragraph 2, of the Statute of the Court, and minimizing, where possible, any reservations attached to such a declaration;

(e) if they have made such a declaration accompanied by one or more reservations or if they do so in the future, consider withdrawing such reservations;

(f) consider submitting by special agreement to the International Court of Justice or to arbitration, using the Permanent Court of Arbitration, as appropriate, those disputes which lend themselves to such procedures;

(g) to the extent feasible, become party to other appropriate treaties, and other international agreements on dispute settlement;

(h) make wider use of international dispute settlement institutions;

(i) consider accepting the jurisdiction of international bodies for the peaceful settlement of disputes or control mechanisms, established by multilateral treaties pertaining, inter alia, to the protection of human rights, or, as the case may be, withdrawing existing reservations in respect of such mechanisms;

(j) examine means of establishing and strengthening mechanisms for securing compliance with binding decisions taken in the framework of the peaceful settlement of disputes;

(k) work actively within the international community for the advancement of methods for the peaceful settlement of disputes.

Information to natural or legal persons

10. In relation to disputes between them that are of special relevance to particular natural or legal persons, the participating States will, as they deem appropriate, provide information to those persons and hear their views.

PROVISIONS FOR A CSCE PROCEDURE FOR PEACEFUL SETTLEMENT OF DISPUTES

Section I

If a dispute arises between participating States, they will, without undue delay and in good faith, seek to settle the dispute through a process of direct consultation and negotiation, or seek to agree upon an appropriate alternative procedure of settling the dispute.

Section II

Without prejudice to the right of any participating State to raise an issue within the CSCE process, a dispute of importance to peace, security, or stability among the participating States may be brought before the Committee of Senior Officials by any party to the dispute.

Section III

The procedure described below will not apply if the dispute has previously been dealt with, or is being addressed, under some other procedure for the settlement of disputes, as referred to in Section VIII, or is covered by any other process which parties to the dispute have accepted.

Section IV

If the parties are unable, within a reasonable period of time, in the light of all circumstances of the dispute, to settle the dispute in direct consultation or negotiation, or to agree upon an appropriate procedure for settling the dispute, any party to the dispute may request the establishment of a CSCE Dispute Settlement Mechanism by notifying the other party or parties to the dispute.

Section V

1. A CSCE Dispute Settlement Mechanism consists of one or more members, selected by common agreement of the parties to a dispute from a register of qualified candidates maintained by the nominating institution. The register

comprises the names of up to four persons nominated by each participating State desiring to do so. No member of a Mechanism may be a national of, or permanently resident in the territory of any State involved in the dispute. By agreement between the parties, a Mechanism may include members whose names are not included in the register.

2. If the parties to a dispute have not reached agreement on the composition of a Mechanism within three months from the initial request of a party for the establishment of a Mechanism, the Senior Official of the nominating institution will, in consultation with the parties to the dispute, select from the register a number of names less than six. If the Senior Official of the nominating institution is a national of any of the States involved in the dispute, his functions will be performed by the next most senior official who is not such a national.

3. Each party (*) to the dispute has the right to reject up to three of the nominees. The parties will inform the nominating institution of the rejections, if any, within one month of having been informed of the nominations. This information will be confidential. After one month from the date of informing the parties of the nominations, the nominating institution will notify the parties of the composition of the Mechanism.

4. If the result of the above process is that all the nominees have been rejected, the nominating institution will select from the register an additional five names which have not been included in the initial nominations.

5. Each party to the dispute has now the right to reject one nominee. The parties will inform the nominating institution of the rejections, if any, within fourteen days of having been informed of the nominations. This information will be confidential. After the expiry of fourteen days from the date of informing the parties of the nominations, the nominating institution will notify the parties of the composition of the Mechanism.

(*) The problems arising when the parties are more than two will require further consideration.

Section VI

1. When the Mechanism has been established, it will seek appropriate contact with the parties to the dispute, separately or jointly. The Mechanism will adopt its methods of work, proceeding in such informal and flexible manner as it may deem practical.

2. Unless the parties agree otherwise, the proceedings of the Mechanism and any comment or advice offered by it will be confidential, although the fact that the Mechanism has been established may be acknowledged publicly.

3. The Mechanism may, if the parties so agree, use the premises and facilities of the International Bureau of the Permanent Court of Arbitration.

Section VII

The Mechanism will seek such information and comments from the parties as will enable it to assist the parties in identifying suitable procedures for the settlement of the dispute. The Mechanism may offer general or specific comment or advice.

Section VIII

The comment or advice of the Mechanism may relate to the inception or resumption of a process of negotiation among the parties, or to the adoption of any other dispute settlement procedure, such as fact-finding, conciliation, mediation, good offices, arbitration or adjudication or any adaptation of any such procedure or combination thereof, or any other procedure which it may indicate in relation to the circumstances of the dispute, or to any aspect of any such procedure.

Section IX

The parties will consider in good faith and in a spirit of co-operation any comment or advice of the Mechanism. If, on the basis of the proceedings of the Mechanism and of any comment or advice offered, the parties are

nevertheless unable, within a reasonable time, to settle the dispute or to agree upon a procedure for its settlement, any party to the dispute may so notify the Mechanism and the other party to the dispute. Any party may thereupon, consistently with the provisions of Section VI, paragraph 2, bring that circumstance to the attention of the Committee of Senior Officials.

Section X

The failure of a party to act upon any comment or advice of the Mechanism with regard to a procedure for the settlement of a dispute does not relieve any of the parties of the duty to pursue its efforts to settle the dispute by peaceful means.

Section XI

In the event referred to in the second sentence of Section IX, any party to the dispute may, within a period of three months from any notification, request the Mechanism to provide general or specific comment or advice on the substance of the dispute, in order to assist the parties in finding a settlement in accordance with international law and their CSCE commitments. The parties will consider in good faith and in a spirit of co-operation any such comment or advice of the Mechanism.

Section XII

1. Notwithstanding a request by a party under either Section IV or Section XI, the Mechanism will not be established or continued, as the case may be, if another party to the dispute considers that because the dispute raises issues concerning its territorial integrity, or national defence, title to sovereignty over land territory, or competing claims with regard to the jurisdiction over other areas, the Mechanism should not be established or continued.

2. In that event, any other party to the dispute may bring that circumstance to the attention of the Committee of Senior Officials.

Section XIII

The parties to a dispute may at any time by mutual agreement modify or adapt the present procedure as they may consider appropriate to facilitate the settlement of their dispute, inter alia, by agreeing:

(a) to authorize the Mechanism either to conduct a process of fact-finding or to entrust one or more persons, one or more participating States, or any competent CSCE institution, or any other body, with a fact-finding mission;

(b) to request the Mechanism to undertake or organize any expert function in regard to the subject-matter of the dispute;

(c) to request the Mechanism to report in any other form than provided in the foregoing;

(d) to accept any comment or advice of the Mechanism as binding, in part or in full, with regard to the settlement of the dispute.

Section XIV

Any expenses incurred in utilizing the CSCE Dispute Settlement Mechanism, other than those incurred by the parties to the dispute for the conduct of the proceedings, will be shared equally between the parties to the dispute unless they agree otherwise.

Section XV

Nothing stated in the foregoing will in any way affect the unity of the CSCE principles, or the right of participating States to raise within the CSCE process any issue relating to the implementation of any CSCE commitment concerning the principle of the peaceful settlement of disputes, or relating to any other CSCE commitment or provision.

Section XVI

All parties to a dispute will implement meaningfully and in good faith the CSCE Dispute Settlement Procedure.

* * *

The representatives of the participating States noted that the Council of Ministers for Foreign Affairs will take into account the Report of the Valletta Meeting at its first meeting in Berlin. In this context, the representatives of the participating States recommend that the Council establish the necessary arrangements in accordance with the Charter of Paris for a New Europe. They, furthermore, noted that the next CSCE Follow-up Meeting in Helsinki will assess the progress achieved at the Valletta Meeting. In this context, the representatives of the participating States consider that the commitments contained in the present Report as well as their implementation should be kept under review, bearing in mind the importance of enhancing the effectiveness of the procedure.

The representatives of the participating States expressed their deep gratitude to the people and the Government of Malta for the excellent organization of the Meeting and for the warm hospitality extended to them during their stay in Malta.

Valletta, 8 February 1991